



**2008 Colorado General Assembly**  
**Mortgage Broker Complaint Report**



**Department of Regulatory Agencies**  
**Division of Real Estate**

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# Department of Regulatory Agencies

The Division of Real Estate is one of nine divisions housed within the Department of Regulatory Agencies (DORA). DORA's mission is consumer protection, which it achieves through consumer education, administration of professional standards, and consistent statute enforcement. The regulatory activities originating from DORA serve as a catalyst for the promotion of a fair marketplace and a thriving economy in Colorado.

The Mortgage Broker Program is a reflection of DORA's mission. The passage of legislation that created regulatory oversight of this industry generated educational and professional standards. The Director of the Division of Real Estate continues to foster relationships with stakeholders across Colorado to identify both industry needs and areas of consumer harm. Through aggressive, consistent and fair enforcement actions, the Director is establishing credibility in a previously unregulated industry. Colorado no longer leads the nation in home foreclosures due in part to these efforts.

## Division of Real Estate

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# **2008 Colorado General Assembly Mortgage Broker Complaint Report**

## **I. Background**

Colorado mortgage broker law requires the Director of the Division of Real Estate to maintain a system, which may include, without limitation, a hotline or web site that gives consumers a reasonably easy method for making complaints about a mortgage broker. Additionally, the Director is required to review the complaints annually and prepare a report to be issued to the committee of the general assembly that has oversight of mortgage brokers. Colorado provisions require the report to contain complaint and investigatory trends. Accordingly, the Director has prepared the following report for review. In this report, you will learn how the Director has created an online complaint system so any interested party may easily file a grievance. Additionally, the following report details the methodology, mortgage broker legislative history in Colorado, implementation of all new provisions and how the Director is utilizing all new laws to protect Colorado consumers and the integrity of Colorado's real estate market, while ensuring a fair and competitive marketplace where business can thrive.

## **II. Methodology**

In preparing the following report, complaint data from January 1, 2007 through March 31, 2008 was reviewed. This timeline was determined in order to provide Colorado's General Assembly with as much data as is possible. Since Colorado's mortgage broker regulatory program is extremely new, no historical data exists for any

type of an annual or year to year comparison. Rather than only providing statistics for complaints opened and investigated, the Director has taken a more detailed approach including the history of mortgage broker law in Colorado, how applicable laws have been implemented by way of rules, position statements and the use of task forces to garner industry, consumer and related stakeholder input. In this report, all of the details for every new statute, rule and complaint may not be captured. All rules, statutes, position statements and disciplinary action may be viewed in their entirety on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm>. The intent of this report is to provide an overview of the vast regulatory changes and to provide pertinent data regarding the receipt, investigation and result of all complaints received or opened at the Division of Real Estate. Providing greater detail than is required by statute provides a foundation and will lead to a greater understanding of the past, present and the future of Colorado's mortgage broker regulatory program.

### **III. Executive Summary**

To date, Colorado's mortgage broker regulatory program has been implemented as efficiently and effectively as is possible. Colorado mortgage broker law requires the regulation of individual natural persons. Accordingly, this required the registration and now licensing of thousands of individuals. The Mortgage Broker Registration Act became effective July 1, 2006 and required registration for individual mortgage brokers by January 1, 2007. This allowed the Director an extremely short timeline to accommodate such statutory requirements. Due to the vast amount of individual oversight, the Director of the Division of Real Estate emphasized a desire for online processes. Since technology and efficiency is a priority for the Director, it was imperative to summon as many resources as were available for the purposes of development, testing and implementation of an online registration system. On October 1, 2006, an online registration system became a reality, where mortgage broker applications could be submitted and reviewed in real time, without inherent delays associated with paper dependent procedures or logistical deficiencies intrinsic in collecting thousands of applications by way of mail, facsimile or personal delivery. As a result, the Division

was easily able to register all those who applied and those individual mortgage brokers who had demonstrated compliance with the statutory requirements. The only delay in this process was caused by the requisite criminal background check, since this process takes approximately 2-3 months. Due to the success of online registration, on January 1, 2007, the Director launched a parallel online complaint process necessary to allow adequate access for stakeholders with grievances and create efficiencies internally from a processing standpoint.

Beginning January 1, 2007, Colorado's mortgage broker regulatory program began accepting complaints specific to the limited authority granted by the Mortgage Broker Registration Act. The Director was only able to deny, refuse to renew or revoke a registration if the mortgage broker lied on their application, had been convicted of a crime involving fraud, theft, deceit, material misrepresentation or the breach of a fiduciary duty, or had a professional real estate or financial related license revoked or suspended for deceptive conduct. The Director was unable to levy fines or seek disciplinary action against individuals complicit in mortgage fraud. In 2007, Colorado's General Assembly acted and passed four new mortgage broker bills. On June 1, 2007, Governor Bill Ritter Jr. signed all four bills into law. Effective June 1, 2007, an exemption for employees and exclusive agents of Federal Housing Administration approved companies was repealed. This may have created a crisis had the Director not responded so quickly. Since the criminal background process takes 2-3 months, thousands of mortgage brokers may have been placed out of business overnight. Fortunately, new laws granted the Director rule making authority. As a result, the Director adopted an emergency rule that created an immediate and automatic temporary registration for all individuals affected. This created a seamless transition without any undue hardship.

Immediately after the passage of these new laws, the mortgage industry voiced concern regarding many of the new provisions. Specifically, they were unable or unaware of how to comply. As a result, the Director appointed an eleven (11) member Mortgage Broker Rulemaking Task Force. In this task force, every relevant association is represented, as were consumers, other real estate professionals and Colorado's Attorney General John Suthers. The task force prioritized the most important issues.

Accordingly, the Director adopted emergency rules providing clarity until all areas of concern had been addressed. This required countless hours in bi-weekly meetings to discuss and resolve many of the concerns. Most of these rules were eventually adopted as permanent rules in compliance with the Administrative Procedures Act. To date, the Director has adopted eleven (11) permanent rules, has issued four position statements and currently has only one emergency rule in place. It is apparent the Director has strived and has provided clarity for many of the ambiguities and uncertainties within new statutory provisions.

Due to the effectiveness of the Mortgage Broker Rulemaking Task Force, the Director appointed a ten (10) member Mortgage Broker Education Task Force to assist in defining the requisite education and testing required in Senate Bill 07-203. Through this process, mortgage brokers are now required to complete forty (40) hours of education and pass a 100 question test focusing on state laws and regulations, federal laws and mortgage broker practices. The focus of this education is to create an atmosphere of competence throughout the mortgage broker community. Competency is vital as mortgage brokers are required to recommend appropriate products for consumers, in light of their financial circumstances. The requisite education and test were completed and ready for enrollment April 1, 2008. The Director has allowed the industry an ample nine (9) months for completion. Mortgage brokers may utilize traditional classrooms, complete courses online and take the exam at various test sites in Colorado and around the nation.

Since January 1, 2007, there has certainly been a whirlwind of changes to Colorado's mortgage broker regulatory program. The Director has ensured a seamless transition for this previously unregulated industry by adopting pertinent and timely rules, while soliciting extensive input from related industries, consumers and other state agencies. Additionally, the Director has provided efficient processes regarding the registration and licensing of mortgage brokers. The Director has utilized appropriate resources to provide consumers, and whom ever may have a grievance, a technologically savvy system that allows complaint submission from the convenience of their homes. In fact, consumers may now submit complaints in less time than it takes to place a phone call. Regarding enforcement of Colorado's new statutes, the Director has taken an

aggressive stance on deceptive business practices and fraudulent activities. The Director is exhausting any and all resources to ensure unscrupulous mortgage brokers are removed from the industry and prevented from causing additional harm to consumers. Lastly, Colorado's mortgage broker regulatory program has proven to be an essential program that establishes credibility within the mortgage industry, while adequately protecting public health, safety and welfare.

#### **IV. Mortgage Broker Laws in Colorado**

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.) requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. In June of 2004, the Colorado Association of Mortgage Brokers (CAMB) submitted a sunrise application to DORA for review. The application sought state registration of mortgage brokers. DORA completed the sunrise review on October 14, 2005. In summary, the report concluded that regulation was necessary due to concerning harm inflicted on the public by unscrupulous mortgage brokers.

In 2006, the Colorado General Assembly acted and passed House Bill 06-1161, commonly know as the Mortgage Broker Registration Act. This legislation required registration for any individual who met the definition of mortgage broker or broker a mortgage. Mortgage broker was defined as an individual who negotiates, originates, or offers or attempts to negotiate or originate for a borrower, and for a commission or other thing of value, a loan to be consummated and funded by a mortgage lender. Broker a mortgage was defined as to directly or indirectly act as a mortgage broker. Requirements for registration were as follows:

1. Completion of a criminal background check conducted by the Colorado Bureau of Investigations and the Federal Bureau of Investigations;
2. A \$25,000.00 surety bond;
3. Completion of the registration application; and

4. Payment of a \$200.00 application fee.

In summary, the Mortgage Broker Registration Act exempted the following individuals:

1. Employees and exclusive agents of banks, savings and loan associations, industrial banks, and credit unions;
2. Attorneys who render services in the course of practice, who are licensed in Colorado, and who are not primarily engaged in the business of negotiating residential mortgage loans; and
3. Officers, partners, members, exclusive agents, contractors, or employees of federal housing administration (FHA) approved mortgagees or appointed federal housing (FHA) administration correspondents.

Section 12-61-905, C.R.S. mandated the Director of the Division of Real Estate to deny, refuse to renew, or revoke the registration of an applicant who had:

1. Filed an application with the Director containing a material misstatement of fact or omitted any required disclosures;
2. Within the last five (5) years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty; and
3. Had an applicable license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as a mortgage broker, a real estate broker, a real estate appraiser, an insurance producer, an attorney, a securities broker-dealer, a securities sales representative, an investment advisor or an investment advisor representative.

Additionally, the Director was granted the authority to summarily suspend a registrant and issue cease and desist orders.

Unfortunately, this bill had very limited means of discipline. The Mortgage Broker Registration Act did not allow the Director to seek disciplinary action against mortgage brokers who were complicit in deceptive practices or real estate fraud unless they had been actually convicted or had disciplinary action taken against professional

licenses held in other states, by other agencies or divisions. Essentially, this bill was a bare bones registration program with little to no teeth.

On June 1, 2007, Governor Bill Ritter Jr. signed House Bill 07-1322 into law. This bill significantly changed Colorado's mortgage broker regulatory program. First of all, the exemption for officers, partners, members, exclusive agents, contractors, or employees of FHA approved mortgagees or FHA administered correspondents was repealed. The Director viewed this repeal as pertinent since the Division of Real Estate had registered 5,300 mortgage brokers and had exempted close to 24,000, most of whom were included within the FHA exemption. Additionally, the Division learned that most, if not all, mortgage brokers who had been denied registration, simply began working for FHA approved companies.

Furthermore, this bill significantly expanded the Director's disciplinary tools and added significant prohibitions for mortgage brokers. Specifically, the Director gained the ability to levy fines as a means of enforcement. In summary, mortgage brokers were now prohibited from:

1. Directly or indirectly employing a scheme to defraud or mislead borrowers, lenders or any person;
2. Obtaining property by fraud or misrepresentation;
3. Advertising interest rates, points or other financing terms unless they were actually available; and
4. Failing to pay third-party providers, including appraisers, title companies and credit reporting agencies.

House Bill 07-1322 also allowed the Director the ability to promulgate rules. This provision was necessary to ensure effective and responsive implementation. Some of the new provisions also required mortgage brokers to disclose specific terms on mortgage transactions. Mortgage brokers became responsible for disclosing, to the borrower, all of the finance terms, third-party costs and fees, compensation and lock-in agreements. These new provisions drastically changed Colorado's mortgage broker regulatory program by adding new responsibilities for mortgage brokers, increasing transparency for consumers and establishing standards of conduct.

On June 1, 2007, Senate Bill 07-085, became effective upon signature by Governor Bill Ritter Jr. Primarily, new provisions prohibited mortgage brokers from directly or indirectly compensating, coercing or intimidating a real estate appraiser for the purpose of influencing their independent judgment. Additionally, such conduct also became a violation of Colorado's Consumer Protection Act, which is enforced by the Office of the Attorney General. Furthermore, this bill establishes violations as a class 1 misdemeanor upon first conviction and a class 6 felony upon subsequent convictions.

Senate Bill 07-216 was the third bill to become effective in 2007. Effective July 1, 2007, this bill created a duty of good faith and fair dealing in all communications and transactions with a borrower. This included, but was not limited to making a reasonable inquiry into a borrowers current and prospective income, existing debts and other obligations, and any other information known to the mortgage broker, and after making such an inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower. This bill required that all transactions contain a reasonable, tangible net benefit to the borrower.

In 2007, Governor Bill Ritter Jr. also signed Senate Bill 07-203 into law. This bill became effective January 1, 2008 and changed the regulatory framework for mortgage brokers from registration to licensing. As a result, there were several new requirements for acquiring and maintaining a mortgage broker license. They include:

1. Pre-licensing education;
2. Pre-licensing test;
3. Continuing education; and
4. Errors and omissions insurance.

Furthermore, Senate Bill 07-203 added significant grounds for disciplinary action. In summary, additional grounds were as follows:

1. Converting funds of others, diverting funds of others without proper authorization;
2. Having demonstrated unworthiness or incompetency to act as a mortgage broker by conducting business in such a manner as to endanger the interest of the public;

3. Failing to exercise reasonable supervision over the activities of licensed employees; and
4. Convictions, pleas of guilt or nolo contendere to any crime in Article 3 of Title 18, C.R.S., parts 1 to 4 of Article 4 of Title 18, C.R.S., Article 5 of Title 18, C.R.S., part 3 of Article 8 of Title 18, C.R.S., Article 15 of Title 18, C.R.S., Article 17 of Title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states.

The impact of all of the aforementioned bills is that Colorado has been transformed from a state with little to no regulatory oversight of mortgage brokers to a state with reasonable and progressive regulation. In 2006, Colorado was one of only two states, the other being Alaska, with no oversight regarding mortgage brokers. The initial Mortgage Broker Registration Act provided a bare bones registration program with little to no enforcement capabilities and resources. Due to the passage of four new mortgage broker bills by Colorado's General Assembly and Governor Bill Ritter Jr. in 2007, Colorado now serves as an example of how to effectively regulate mortgage brokers.

## **V. Implementation**

Colorado's mortgage broker regulatory program is unique regarding its applicability to natural persons. Many other states register or license only the company or a representative of the company. Colorado, on the other hand, regulates every individual who originates or negotiates mortgage financing for our consumers. Accordingly, Colorado required thousands of registrations and licenses. In order to accommodate such vast numbers, the Director developed an online registration system. This system allowed mortgage brokers the ability to apply in real time. Assuming the criminal background check had been completed and forwarded to the Division of Real Estate, the Director was easily able to register mortgage brokers within the twenty-one day timeline defined in section 12-61-903(7), C.R.S. The online registration system significantly reduced the amount of personnel required to register thousands of individuals. Fortunately, this allowed the Director the ability to allocate resources for the purpose of enforcing Colorado mortgage broker law, as opposed to processing

applications. Since Senate Bill 07-203, the Mortgage Broker Licensing Act, became effective January 1, 2008, the online system has been upgraded to meet the new licensing requirements. To date, the Director has licensed nine thousand six hundred (9,600) mortgage brokers. The ability to rely on technology has had numerous benefits, benefits that have been acknowledged by the industry and by state regulators nationwide. Colorado's online registration and now licensing system serves as an example of efficiency, while easily accommodating greening government initiatives.

Due to the vast amount of legislation passed in 2007, the Director was charged with implementation of all new provisions. While voluminous in nature, the Director immediately sought input and participation from the mortgage industry regarding the many rules necessary for a successful transition. In July of 2007, the Director appointed an eleven (11) person Mortgage Broker Rulemaking Task Force. Appointees serve on the task force for a 12 month appointment. Members included:

1. Jim Lewis, representing the Colorado Mortgage Lenders Association;
2. Bill Kidwell, representing the Colorado Association of Mortgage Brokers;
3. Dave Williams, representing SMART Professionals;
4. James Spray, representing independent mortgage brokers;
5. Zach Urban, representing Colorado consumers;
6. Tom Kennedy, representing owners of mortgage companies;
7. Rick Accomazzo, representing Colorado lenders;
8. Bart Bartholomew, representing independent mortgage brokers;
9. Anita Padilla, representing owners of mortgage companies;
10. Carolyn Carnie, representing independent mortgage brokers; and
11. Jan Zavislan, representing the Office of the Attorney General.

Due to extensive clarification necessary for the industry and consumers, the task force initially held meetings every two weeks for three hours. The task force immediately addressed topics including reasonable inquiry, reasonable tangible net benefit, disclosure of finance terms, disclosure of third-party costs and fees, disclosure of compensation, disclosure of lock-in agreements, mortgage broker contracts, errors and omissions insurance and temporary licensing. While a blend of emergency rules, position statements and permanent rules were used to address the most pertinent topics, the end

result was an extremely responsive effort that provided as swift of clarification as is allowed by Colorado rulemaking law. To date, the following provides a summary of most permanent rules that are effective and enforceable:

1. Rule 1-1-1, entitled *Good-Faith Temporary Registration for Mortgage Brokers*.
  - a. In order to become registered, mortgage brokers are required to have a completed criminal background check administered by the Colorado Bureau of Investigations and the Federal Bureau of Investigations. Since this process takes 2-3 months to complete, mortgage brokers would have been adversely affected by the FHA exemption repeal on June 1, 2007. Accordingly, the Director adopted this rule in order to avoid an adverse impact on the mortgage broker community.
  - b. This rule effectively allowed mortgage brokers who had demonstrated a good-faith effort to become registered and who were merely awaiting the results of their background check to remain compliant.
2. Rule 1-1-2, entitled *Mortgage Broker Temporary License*.
  - a. On January 1, 2008, Colorado's mortgage broker registration program was upgraded to a licensing program.
  - b. This rule mirrors the Rule 1-1-1, *Good-Faith Temporary Registration for Mortgage Brokers*, and adds language specific to licensing. Specifically, this rule allows licensed mortgage brokers the ability to sponsor mortgage brokers with pending applications. The sponsoring mortgage broker is responsible for all acts and violations of the temporary licensee.
3. Rule 1-3-1, entitled *Errors and Omissions Insurance for Mortgage Brokers*.
  - a. Section 12-61-903.5, C.R.S. requires licensed mortgage brokers to acquire and maintain errors and omissions insurance. The Director is required to define the terms and conditions of such coverage.
  - b. Rule 1-3-1 requires mortgage brokers to have errors and omissions coverage of \$100,000.00 per incident, \$300,000.00 in annual aggregate coverage, with a deductible no greater than \$10,000.00.

Additionally, mortgage brokers are required to maintain coverage specific to all types of transactions conducted, including subprime and reverse mortgage products.

4. Rule 3-1-1, entitled *Reasonable Inquiry and Tangible Net Benefit*.
  - a. Section 12-61-904.5, C.R.S., states that mortgage brokers have a duty of good faith and fair dealing regarding all communications and transactions with borrowers. This includes, but is not limited to:
    - i. The duty to make a reasonable inquiry into the borrowers financial circumstances; and
    - ii. The duty to only recommend appropriate mortgage products after considering the borrowers financial circumstances.
  - b. This rule creates a safe harbor for reasonable inquiry if the mortgage broker interviews and discusses, with the borrower, all subjects contained on the residential uniform loan application. This includes residence history, employment history, assets, debts, real estate owned, income, etc... Additionally, the Director developed a disclosure form where mortgage brokers and the borrowers are required to define the tangible net benefit for the mortgage transaction.
5. Rule 3-1-4, entitled *Prepayment Penalties*.
  - a. Rule 3-1-4 was adopted pursuant to mortgage brokers' duty of good faith and fair dealing in all communications and transactions for borrowers. The duty of good faith includes recommending appropriate products. The Director learned that consumer harm may be caused by abusive prepayment penalties. Specifically, prepayment penalties which extend past the adjustment date of a mortgage loan cause undue hardship and in some instances, lead to foreclosures. Ultimately, prepayment penalties restrict the borrowers' ability to sell or refinance their property.
  - b. Rule 3-1-4 creates a presumption of non-compliance for any mortgage broker who recommends or induces a borrower into a mortgage product with a prepayment penalty that extends past the adjustment

date of any instrument or tool used to define a borrowers' monthly payment. Such instruments or tools include, but are not limited to the interest rate, payment rate, or teaser rate.

6. Rule 5-1-1, entitled *Mortgage Broker Contracts*.

- a. Section 12-61-913, C.R.S. requires mortgage brokers to have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public. In practice, mortgage brokers generally work for a company that maintains such relationships. As a result, it is unrealistic for all mortgage brokers to maintain their own individual agreement with lenders.
- b. Rule 5-1-1 defines compliance for mortgage brokers who individually maintain broker agreements with lenders, are employees of a company which maintains such agreements, or if as an independent contractor, they have a contractual agreement with a mortgage company that maintains the requisite broker agreements.

7. Rule 5-1-2, entitled *Mortgage Broker Disclosures*.

- a. Section 12-61-914, C.R.S., requires mortgage brokers to disclose the finance terms of the loan, all third-party costs and fees, compensation and lock-in agreements. Several of these requirements are new for the mortgage broker community. The Truth in Lending Act (TILA) requires finance terms to be disclosed by the funding entity or creditor and not the mortgage broker. Additionally, these new provisions provided significant changes on how compensation is disclosed for mortgage brokers. Historically, the Real Estate Settlement Procedures Act (RESPA) does not require mortgage brokers, who work for lending entities, to disclose all of the compensation. These mortgage brokers do not disclose compensation that is often directly tied to the interest rate. This type of compensation is commonly referred to as "back end" compensation. As a result, an unlevel playing field was created in the mortgage industry. Fortunately, Colorado statutes

require that all compensation is disclosed, regardless of the type of entity associated with the transaction. The final new requirement for mortgage brokers was disclosure of lock-in agreements. Mortgage brokers have not been required to do so in the past. Colorado statutes require disclosure of whether or not the mortgage broker has actually entered into a lock-in agreement with a lender and if so, mortgage brokers are required to disclose all costs, terms, conditions and the duration of any lock-in agreements.

- b. The *Mortgage Broker Disclosure* rule utilizes two forms already in use in the mortgage industry. This rule allows mortgage brokers to use the Truth in Lending disclosure form when disclosing the finance terms and allows mortgage brokers to utilize a Good-Faith Estimate disclosure form when disclosing all third-party costs and fees. Since Colorado's statutory requirement of compensation disclosure extends beyond RESPA requirements, the Director developed a Colorado specific compensation disclosure form. Rule 5-1-2 requires disclosure of all compensation charged to the borrower and all compensation paid by the funding lender. Compensation must be disclosed in a dollar amount and not a percentage, which had been industry practice. Additionally, the Director created a Colorado specific lock-in disclosure form that mortgage brokers are required to use. This form requires mortgage brokers to disclose all terms of the lock-in agreement, including, but not limited to:
  - i. Whether or not the rate is actually locked;
  - ii. If locked, any associated fees and terms and conditions of any refunds;
  - iii. The teaser, payment or interest rate;
  - iv. Presence of any prepayment penalty;
  - v. Cost and length of any existing prepayment penalty;
  - vi. Fixed term of the teaser, payment or interest rate;

- vii. Type of payment. This includes whether a payment is a negative amortization payment, interest only payment or principal and interest payment; and
    - viii. The expiration of any lock-in agreement.
  - c. The intent of this rule is to increase transparency for Colorado consumers and to require mortgage brokers to clearly and conspicuously disclose all relevant information. Consumers are now able to shop for mortgage financing options with consistent information. Furthermore, this rule creates a level playing field for all individuals who fall within the jurisdiction of Colorado Mortgage Broker law.
- 8. Rule 8-1-1, entitled *Mortgage Broker Advertising*.
  - a. Section 12-61-910.4, C.R.S. requires the Director to adopt rules governing the marketing of nontraditional mortgages by mortgage brokers. Additionally, the Director learned, from industry representatives, that many of the existing mortgage advertisements are misleading.
  - b. Accordingly, the Director adopted rule 8-1-1, which provides guidance on all different types of advertising and is not specific to non-traditional products. This rule essentially requires mortgage brokers to comply with all advertising requirements defined in the Truth in Lending Act and adopts guidance issued by the Federal Trade Commission. Additionally, rule 8-1-1 requires advertising to include a responsible party and contain clear contact information for the mortgage company placing the advertisement. Furthermore, it requires all advertising to contain a link to the Division of Real Estate's website so consumers may verify the license status of their mortgage broker and check for possible disciplinary action.

Position statements have also been used to provide clarification to the mortgage industry. The Director has issued several position statements to date addressing concerns

voiced by the mortgage lending industry. Specifically, confusion existed in the industry regarding whether provisions in section 12-61-904.5, C.R.S. prohibited specific mortgage products or documentation types. This concern was real and may have negatively impacted Colorado consumers' ability to access mortgage credit. As a result, the Director issued a position statement on July 3, 2007 entitled *MB1.1 – Non-Traditional Mortgage Products and Documentation Types*. This position statement clearly defined that mortgage products and documentation types are not broadly prohibited. Rather, that mortgage brokers are required to recommend appropriate products. Once again, the industry voiced concern regarding which individuals meet the definition of a mortgage broker and to broker a mortgage. The industry sought clarification regarding the inclusion of owners, managers and mortgage processors. On January 7, 2008, the Director issued a position statement entitled *MB 1.3 Licensing Required*. This position statement clearly defined that direct managers of mortgage brokers are required to be licensed, while processors who perform purely administrative duties are not required to be licensed. The most recent position statement is entitled *MB 1.4 Applicability of Colorado Mortgage Broker Law Regarding Employees and Exclusive Agents of Federal and State Financial Institutions*. The Director issued this position statement February 13, 2008. Association representatives from state banking and credit unions sought clarity on whether Colorado mortgage broker law included their employees and exclusive agents. Pursuant to sections 12-61-904(1)(c) and 12-61-911(1), C.R.S., employees and exclusive agents of state banks and credit unions are exempt from the licensing requirements, but are not exempt from all other provisions of Colorado mortgage broker law or any rule adopted by the Director. Accordingly, position statement MB 1.4 provided clarity for

banks and credit unions by confirming the inclusion of their employees and exclusive agents. Section 12-61-911, C.R.S. creates a level playing field for all mortgage brokers and clearly demonstrates the intent of Colorado's General Assembly in providing transparency and protection for all Colorado consumers, regardless of the type of institution associated with the mortgage transaction.

Due to the passage of Senate Bill 07-203, all Colorado licensed mortgage brokers are required to complete at least nine hours of a mortgage lending fundamental course and pass a corresponding exam. By statute, the Director was required to define the requisite education and testing. Similar to the rulemaking process, the Director appointed a ten (10) person Mortgage Broker Education Task Force. Appointees include:

1. DJ Davenport, representing owners of mortgage companies;
2. Don Exley, representing professional occupation education providers;
3. Jason Berman, representing the Colorado Association of Mortgage Brokers (CAMB);
4. Bruce M. Jordan, representing the Colorado Mortgage Lenders Association (CMLA);
5. Chris Strieff, representing SMART Professionals;
6. Evan Mellman, representing professional occupation education providers;
7. Zach Urban, representing Colorado consumers;
8. Cheryl Dingwell, representing independent mortgage brokers;
9. Patrick C. Armbrust, representing professional occupation education providers; and
10. Jim McCloskey, representing professional occupation education providers.

With much assistance and guidance from the Mortgage Broker Education Task Force, the Director established a forty (40) hour mortgage lending fundamentals course. The mortgage lending fundamentals course emphasizes federal and state law, responsible business practices and provides mortgage brokers with the working knowledge to lawfully conduct mortgage transactions. Additionally, mortgage brokers are required to demonstrate their mortgage lending knowledge on a requisite exam. In accordance with the Mortgage Broker Rulemaking Task Force, all of these volunteers have spent countless hours and energy actively assisting to further the Division of Real Estate's mission of consumer protection.

Since the inception of the mortgage broker program, the Director has emphasized effective and efficient processes. The Director's use of online licensing and complaint systems has allowed for streamlined access for consumers and the regulated community. Additionally, the mortgage industry sought significant clarification regarding new statutory provisions. The Director utilized emergency rules, position statements, permanent rulemaking authority, and has developed Colorado specific disclosures to accommodate such concerns. Furthermore, the Director sought an abundance of input and participation through appointed task forces. While most of the implementation for the mortgage broker program is now complete, the Director remains committed to all processes and resources exhausted for the purpose of successful implementation.

## **VI. Complaint History and Corresponding Discipline**

As a matter of practicality, it is important to note the Director of the Division of Real Estate, Erin Toll, does not believe a majority of mortgage brokers are complicit in fraudulent mortgage transactions. Unfortunately, the fraud that exists in today's market is a result of the lack of regulatory oversight in the past coupled with bad actors who have been able to abuse Colorado's consumers and real estate market with limited consequences. It is also important to understand that home purchases often represent the consumers' largest financial transaction. With that said, extreme harm to Colorado consumers and our economy can and has been caused by existing deceptive trade practices and fraud. The Director is committed to utilizing all resources including, but not limited to personnel, legal budget, technology, training, and cooperation with other state and federal agencies to address the problems currently plaguing Colorado's real estate market. Additionally, honest and ethical mortgage brokers should not be forced to loose business or even compete with mortgage brokers actively participating in fraudulent and abusive trade practices.

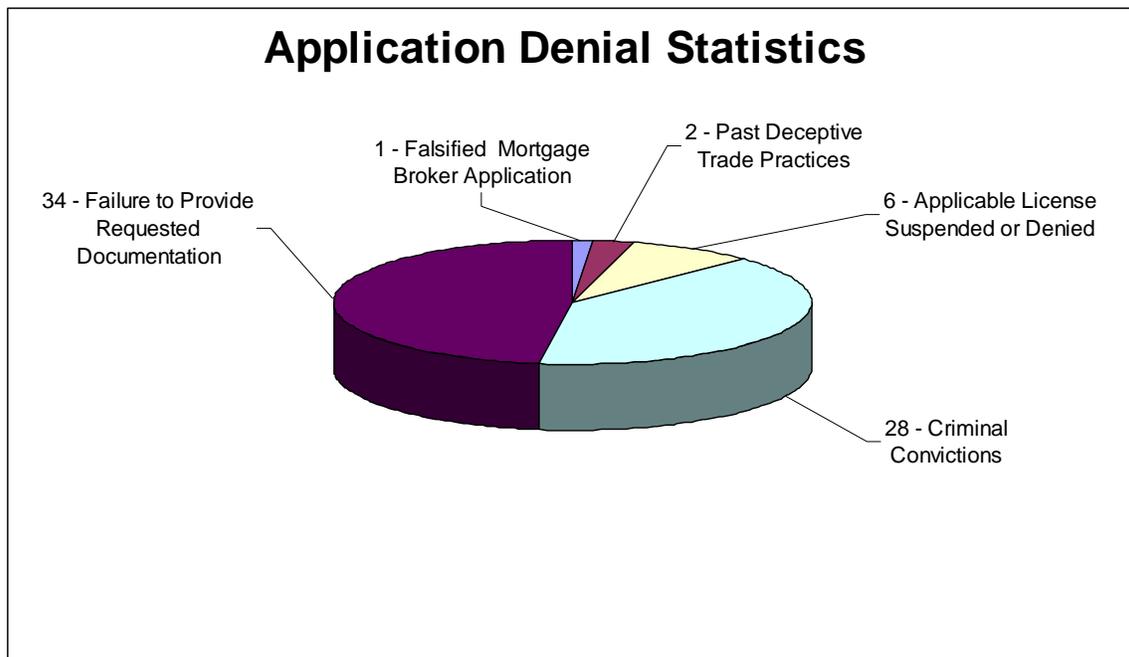
To date, the Director has barred seventy five (75) mortgage brokers from practicing by way of registration and license denials. Currently, the following summarizes the reasons for denials:

1. One (1) individual was denied for falsifying their mortgage broker application;
2. Two (2) individuals have been denied due to past deceptive trade practices;
3. Six (6) individuals have been denied because they had other applicable professional licenses, certifications or registrations suspended or denied for

reasons involving fraud, theft, deceit, material representation or the breach of a fiduciary duty;

4. Twenty-eight (28) individuals have been denied due to applicable convictions, pleas of guilt or nolo contendere; and
5. The remaining Thirty-four (34) denials resulted from a failure to provide, at the request of the Director or authorized representative of the Director, documents related to applicable criminal convictions, pleas of guilt or nolo contendere.

Chart 1.1

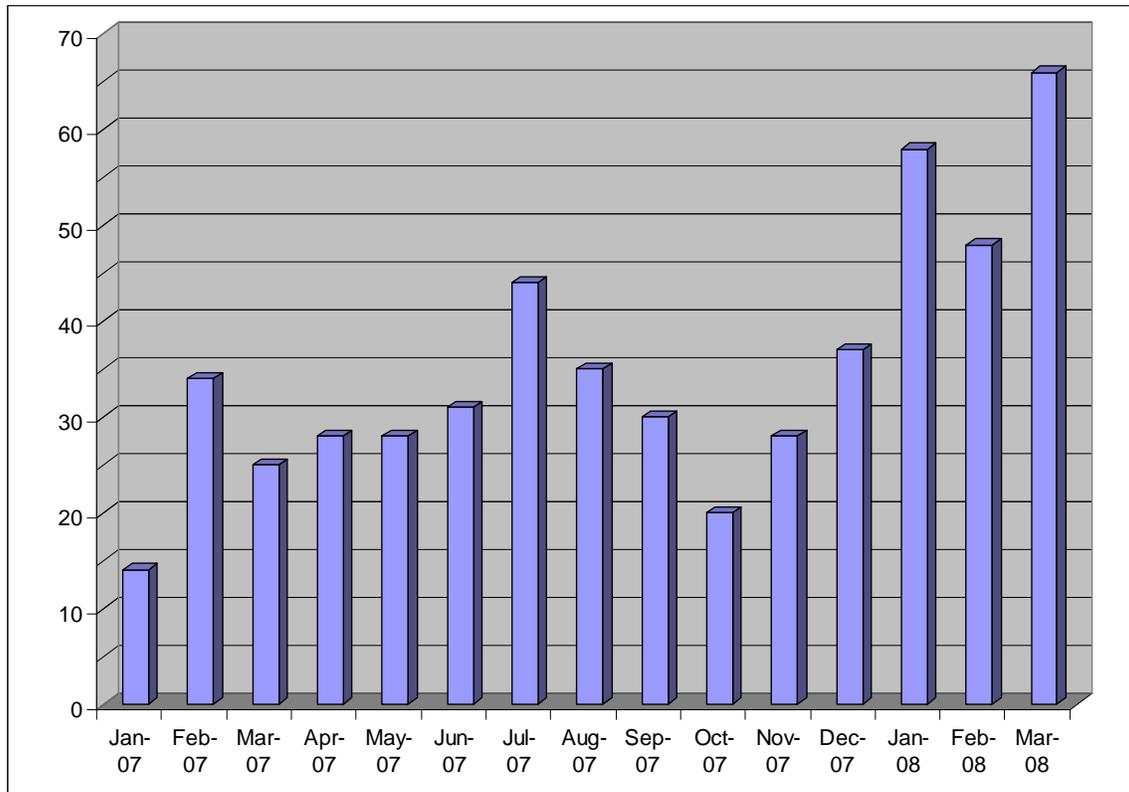


Criminal activity that has led to many of the denials includes forgery, theft, burglary, sexual assault and criminally negligent homicide.

On January 1, 2007, the Division of Real Estate began accepting complaints. The Division receives complaints from consumers, industry professionals, state agencies and from any individual who may have a grievance. Additionally, the Director may open

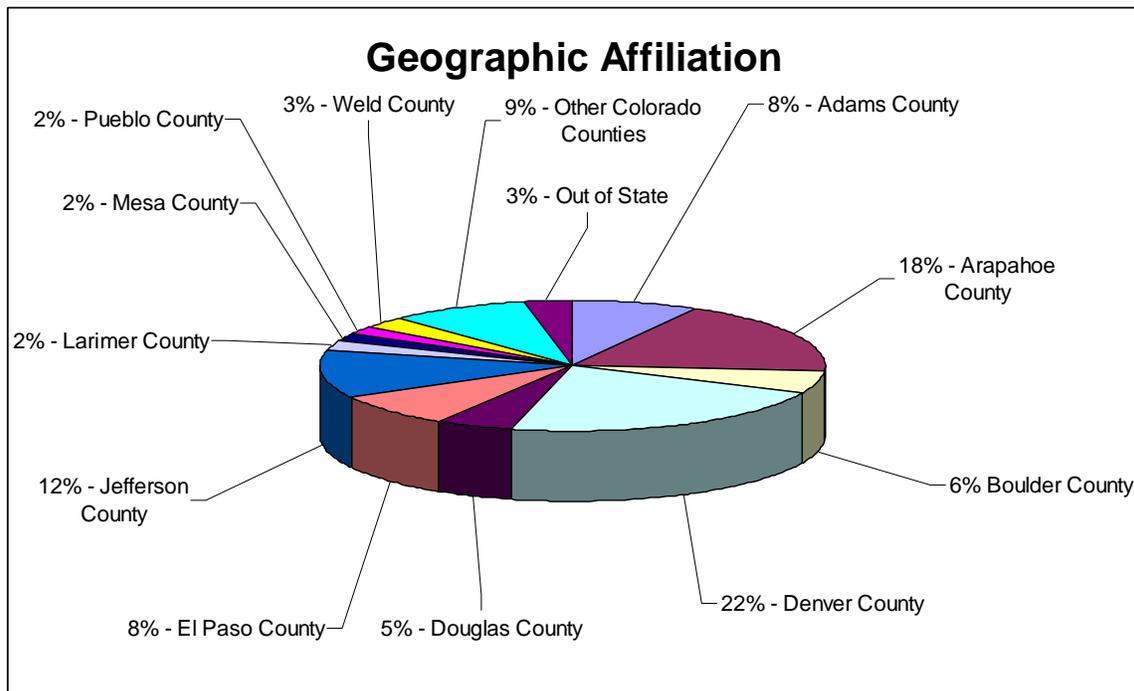
investigations on her own accord. The Division reviews all complaints. All complaints within our jurisdiction are investigated. The Division has developed an online complaint system that has significantly increased access for those who wish to file a grievance. From January 1, 2007 through March 31, 2008, the Division has received or opened 526 complaints. It is important to note the increase in complaints from 2007 to 2008. The volume has more than doubled from 2007 to 2008 for the months of January and March. It is clear that complainants are becoming more familiar with the Division of Real Estate as a resource and with Division procedures concerning how to file a complaint. The following demonstrates how many complaints have been received or opened on a monthly basis:

Chart 1.2 – Monthly Complaints Received



When looking at all of the complaints, it is vital to understand the geographic affiliation with these complaints. When analyzing such data, it is important to know that mortgage brokers often cross county lines regarding purchase and refinance transactions conducted. In reviewing the complaint data, the Division selected the county most directly tied to the transaction. It is apparent that no one county is immune to the issues facing Colorado's real estate market. The Division received complaints from virtually every county across the state. Denver County represented the highest affiliation with complaints at twenty-two percent (22%). Arapahoe County accounted for eighteen percent (18%) and Jefferson County at twelve percent (12%). The following chart displays geographic affiliation for all complaints:

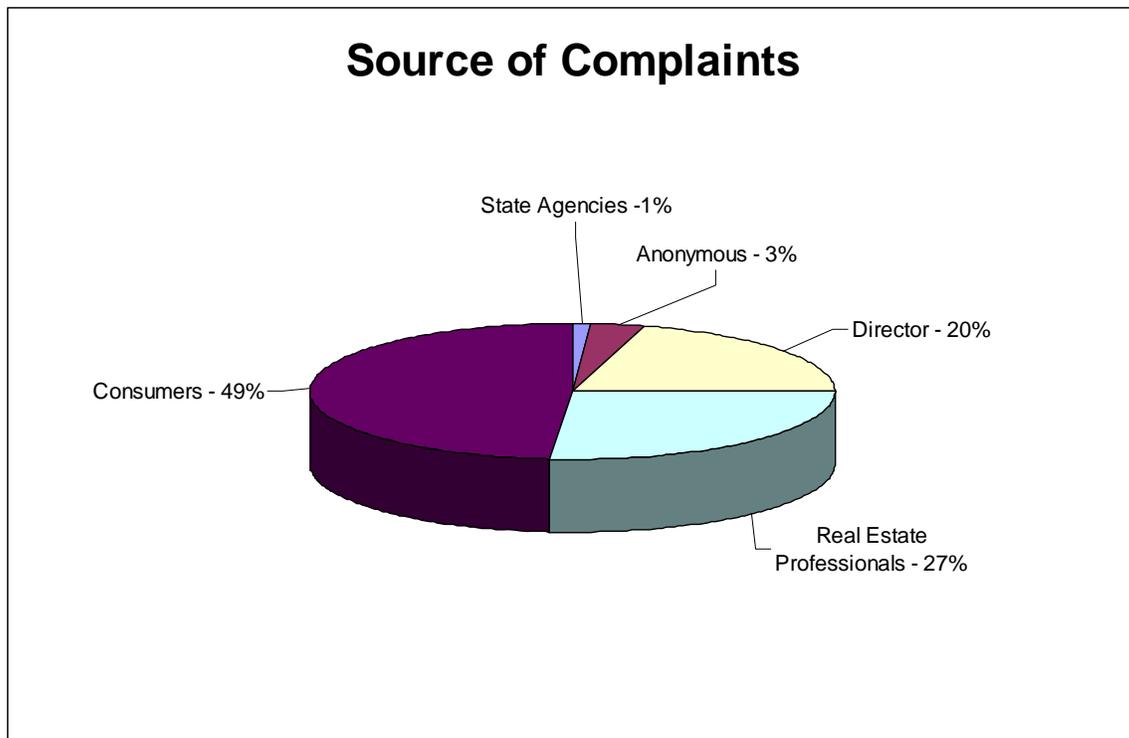
Chart 1.3



Additionally, the Director thought it important to highlight the source of the complaints received or opened. Categories include anonymous complainants, consumers,

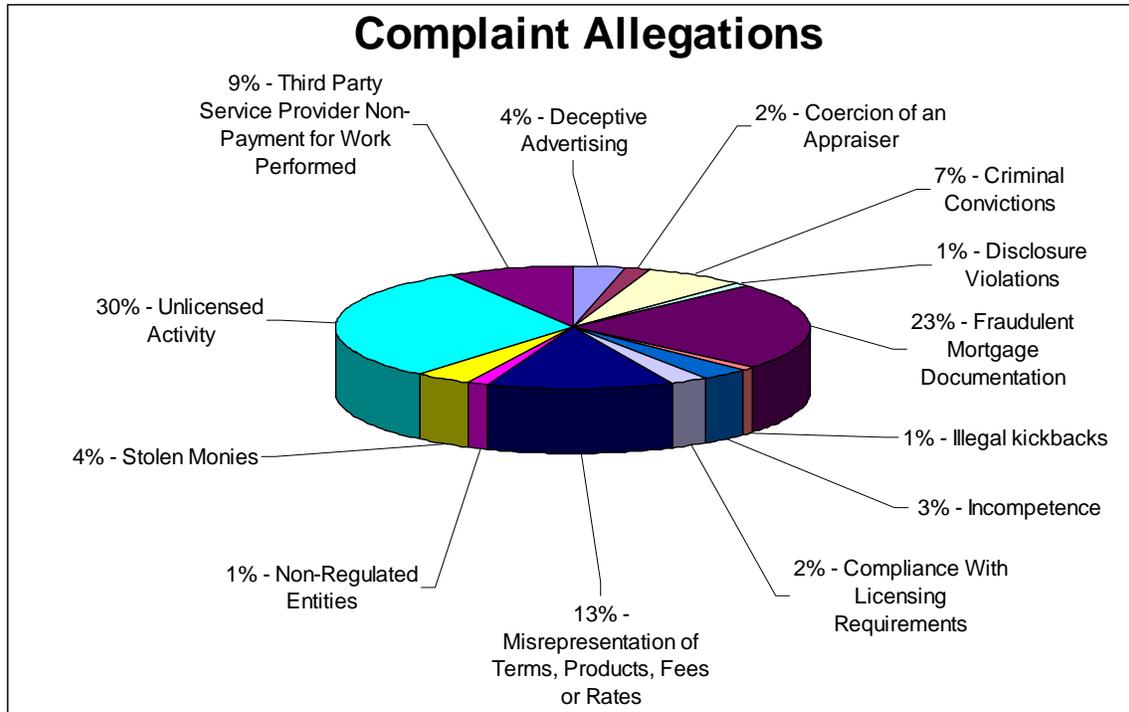
real estate industry professionals, other state agencies and complaints opened by the Director. Forty-eight percent (48%) of all complaints were submitted by consumers. The next largest group submitting complaints were real estate professionals. Real estate professionals include real estate brokers, real estate appraisers, mortgage brokers, and employees of title companies. Real estate professionals submitted twenty-seven percent (27%) of all complaints received or opened by the Director. This demonstrates the industries willingness to help remove bad actors. In an effort to stay pro-active, regarding the enforcement of Colorado mortgage broker law, the Director opened twenty percent (20%) of all complaints received or submitted. As a result, the Director opened 105 complaints from January 1, 2007 through March 31, 2008. The following chart demonstrates the source for all complaints received or opened:

Chart 1.4



Allegations serve as an important component to complaints reviewed and analyzed. This allows the Division of Real Estate to better understand complainant perception. In the following chart, it is important to highlight the three (3) largest percentages of allegations. Unlicensed activity represents the largest category at one hundred fifty-seven (157) or thirty percent (30%) of all allegations. Complainant allegations involving fraudulent documentation comprised one hundred twenty-one (121) or twenty-three percent (23%) of all allegations. Fraudulent documentation involves falsified, altered or manufactured statements for a borrower's income, assets, occupancy, and employment. This also includes any real estate scams used to defraud lenders or consumers. The third largest percentage includes misrepresentation of mortgage products, loan terms, fees and interest rates. Misrepresentations totaled sixty-three (63) or thirteen percent (13%) of all the complaints, emphasizing the importance of increased transparency for Colorado consumers. Accordingly, the Director has adopted several rules and has developed additional disclosures to aid consumers. Mortgage brokers are now required to document all promises made to borrowers at the beginning of the transaction and throughout the loan process. The following chart demonstrates the vast allegations received by the Division of Real Estate:

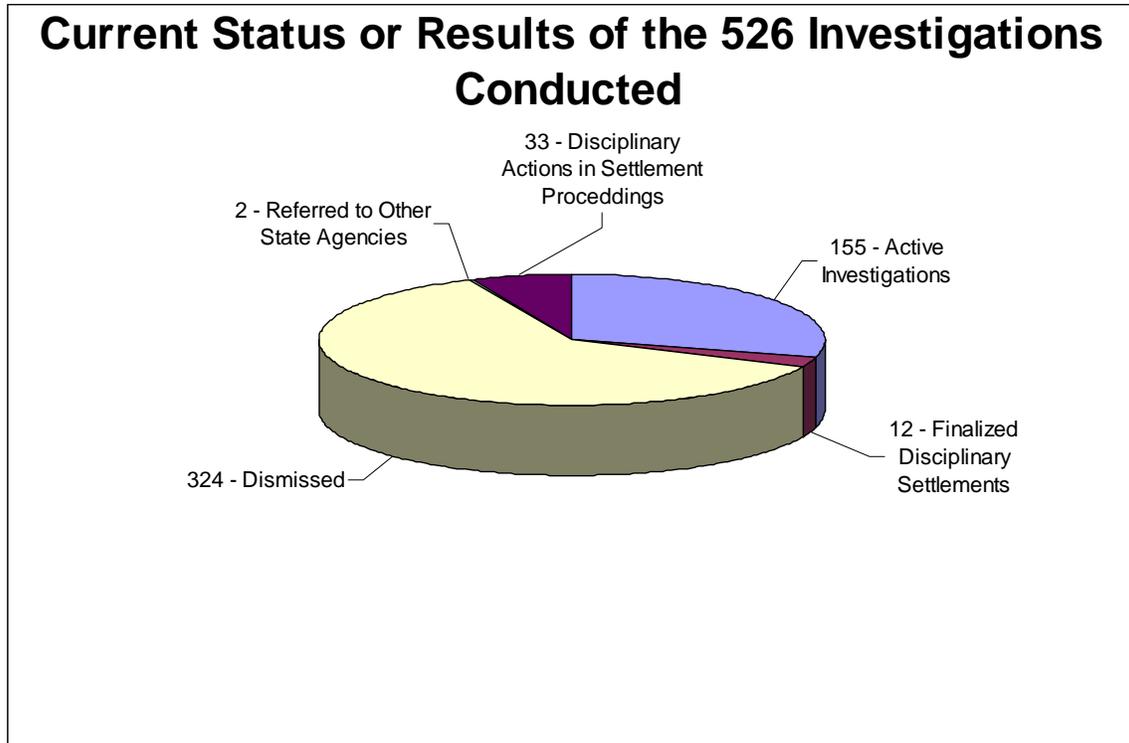
Chart 1.5



Currently, the status of all 526 investigations is as follows:

1. The Division has referred 2 complaints to other state agencies;
2. The Director is seeking or has finalized discipline for 45 mortgage brokers;
3. The Division currently has 155 open and active investigations; and
4. 324 of the complaints have been dismissed for various reasons.

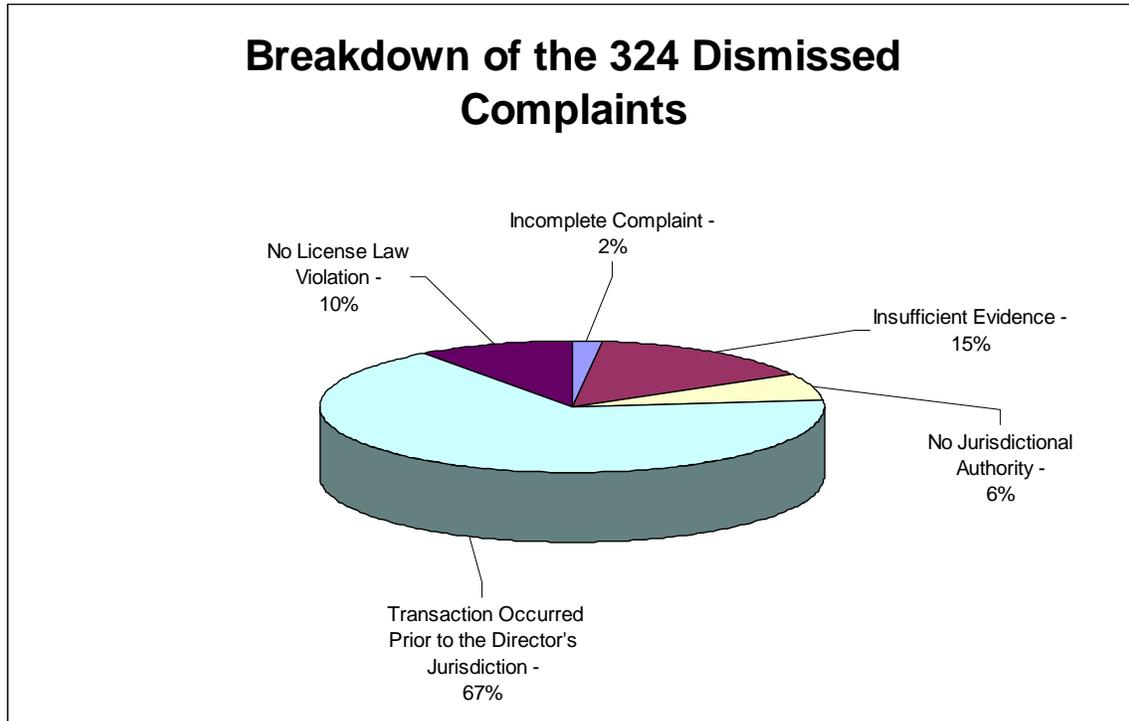
Chart 1.6



It is pertinent to understand the reason for all of the complaints dismissed at the Division of Real Estate. The majority of all dismissed complaints occurred prior to the Director's jurisdiction. Of the three hundred and twenty-four (324) complaints dismissed, two hundred and sixteen (216) were dismissed for this reason. This represents forty-one percent (41%) of all complaints received and sixty-seven percent (67%) of all dismissed complaints. This clearly demonstrates a past consumer need for complaint submission and resolution. The second largest category of dismissals was insufficient evidence. Historically, mortgage brokers have not been responsible for disclosing many aspects pertinent to mortgage financing. Unfortunately, there had been little documentation or accountability for promises made to borrowers. The Director has addressed these issues by rule and development of new disclosure forms. Not only will new disclosures increase transparency, but they will also document expectations set and

promises made by mortgage brokers. Please review the following reasons for the three hundred and twenty-four (324) dismissals:

Chart 1.7



The Director has been aggressively and consistently enforcing Colorado's mortgage broker law when violations are found. Current disciplinary tools utilized by the Director include license action, cease and desist orders, fines and restitution. License action may include denial, probation, suspension or revocation. Cease and desist orders are primarily used for individuals who are not licensed, but have violated Colorado mortgage broker provisions. The Director may impose fines not to exceed one thousand dollars (\$1,000.00) in the first administrative proceeding and for not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000.00) in subsequent proceedings. Statutes require the Director to order mortgage brokers to pay restitution if their license was suspended or revoked for conduct resulting in financial

loss. Additionally, no new license may be provided until restitution has been paid in full. Currently, the Director has many of the necessary tools required to enforce new provisions that became law in 2007.

To date, the Director has summarily suspended two (2) mortgage brokers. Summary suspensions are emergency tools used by the Director. This type of suspension allows the Director to immediately remove mortgage brokers from the industry, when it is imperatively necessary for the preservation of public health, safety or welfare. As a result, summarily suspended licensees receive priority in regards to hearings and other administrative proceedings. Additionally, the Director is also seeking revocation and fines for the two mortgage brokers who have been summarily suspended.

Five (5) mortgage brokers have voluntarily surrendered their mortgage broker licenses. Three (3) of these mortgage brokers agreed to a voluntary surrender because they were found or alleged to be out of compliance with licensing requirements. Specifically, they failed to maintain the requisite surety bond or the errors and omissions insurance. One mortgage broker surrendered her license since the Director alleged that she falsified documents presented to the Division for the purpose of an investigation. The Director also alleged that this mortgage broker negligently made false statements to the Director and willfully made omissions of material fact during the course of the investigation. While this mortgage broker denied these allegations, she agreed to voluntarily surrender her license. Regarding the fifth voluntary surrender, the Director alleged that the mortgage broker was convicted of wire fraud and aiding and abetting. Similarly, the respondent denied these allegations, but agreed to surrender his license.

To date, three (3) mortgage brokers have been issued cease and desist orders. In all three of these cases, the individuals were acting and practicing as mortgage brokers without being licensed. In many instances, licensed mortgage brokers were signing documents on their behalf. The Director is currently seeking disciplinary action against those individuals who may have been complicit in this deceptive trade practice. The remaining two disciplinary actions have resulted in mortgage brokers reaching stipulated agreements with the Director requiring them to pay fines for violations that would not otherwise constitute license suspension or revocation.

The remaining thirty three (33) disciplinary cases are in settlement proceedings or have been referred to the Division's legal council at the Office of the Attorney General for an administrative hearing. The Director posts all finalized disciplinary action on the Division of Real Estate's website. All consumers, industry professionals and other interested parties may easily review applicable stipulated agreements or final agency orders at <http://www.dora.state.co.us/real-estate/index.htm>. The Director, Erin Toll, remains committed to continued effective and efficient enforcement of Colorado mortgage broker law, a necessity to preserve integrity within Colorado's real estate market, while protecting Colorado consumers.